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January 13, 2017

Via ECF
Hon. James L. Cott, U.S.M.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 1950
New York, NY 10007

Re: **Joint Letter Motion Requesting Court Approval of Settlement Agreement**
ESPINOBARROS APOLINAR, et al. v. R.J. 49 REST., LLC d/b/a Toasties et al., No. 15-cv-8655 (KBF) (JLC)

Dear Honorable Judge Cott:

Plaintiffs and Defendants write jointly in accordance with the Court's order relating to the settlement of the current matter. Plaintiffs and Defendants positions are separately detailed in this letter however both parties jointly seek approval of the settlement. Defendants object to the language used by Plaintiffs in describing Defendants' practices such as "theft" but at this point just wish to close this action without further costs and fees.

I. Background

Plaintiffs DELFINO FELIX VARGAS; GIL ESPINOBARROS APOLINAR; FELIX ANTONIO CRUZ; JOSE JAVIER DORANTES DAVILA; JAIME E PAGUAY; VALENTIN HUEPALCALCO SALOMA; JORGE GONZAGA SOLARES; EMILIANO HERNANDEZ; and JORGE LOPEZ GALINDO ("Plaintiffs") are former deliverymen employed by Defendants R.J. 49 REST., LLC d/b/a Toasties and ROBERT KIM ("Defendants").

On November 4, 2015, Plaintiffs GIL ESPINOBARROS APOLINAR and DELFINO FELIX VARGAS filed their Complaint on behalf of themselves and others similarly situated.

On March 28, 2016, Plaintiffs ESPINOBARROS APOLINAR and FELIX VARGAS filed their First Amended Complaint. Plaintiffs alleged that pursuant to FLSA, that they are entitled to recover from the Defendants: (1) illegal meal deductions, (2) unpaid minimum wage, (3) the full portion of the tips illegally retained by Defendants, including "delivery fee" advertised as tips for Toasties deliverymen, (4) reimbursement for Defendants' unlawful deductions and kickbacks, (5) liquidated damages, (6) prejudgment and post-judgment interest; and/or (7) attorneys' fees and costs. Plaintiffs further alleged pursuant to New York Labor Law § 650 et seq. and 12 New York Codes, Rules and Regulations §§ 146 ("NYCRR") that he is entitled to recover from the Defendants: that they are entitled to recover from the Defendants: (1) unpaid minimum wage compensation, (2) illegal meal deductions, (3) the full portion of the tips illegally retained by Defendants, including "delivery fee" advertised as tips for Toasties deliverymen, (4) unlawful deductions and kickbacks from the tip pool to Owner/ Operator Defendant(s), (5) up to five thousand dollars ($5,000) per Plaintiff for Defendants' failure to provide a Time of Hire Notice detailing rates of pay and payday, (6) up to five thousand dollars ($5,000) per Plaintiff for Defendants' failure to provide a paystub that accurately and truthfully lists employee's hours along with the name, employer's name, employer's address and telephone number, employee's rate or rates of pay, any deductions made from employee's wages, any allowances claimed as part of the minimum wage, and the employee's gross and net wages for each pay day, (7) liquidated damages equal to the sum of unpaid minimum wage, unpaid "spread of hours" premium, unpaid overtime in the amount of twenty five percent under NYLL §§190 et seq., §§650 et seq., and one hundred percent after April 9, 2011 under NY Wage Theft Prevention Act, (8) 9% simple prejudgment interest provided by NYLL, (9) post-judgment interest, and (10) attorney's fees and costs.

On August 27, 2016, after Plaintiffs' Motion of Conditional Certification was granted solely to deliverypersonss employed by Toasties 49th Street location, Plaintiffs FELIX ANTONIO CRUZ, JOSE JAVIER DORANTES DAVILA; JAIME E PAGUAY; VALENTIN HUEPALCALCO SALOMA; JORGE GONZAGA SOLARES; EMILIANO HERNANDEZ; and JORGE LOPEZ GALINDO filed their Consent to Sue.

II. The FLSA Settlement is Fair and Reasonable

Based on the estimated alleged total damages, the amount of Two Hundred Thousand Dollars ($200,000.00) (inclusive of Plaintiffs' legal fees) is fair and the proposed settlement agreement should be approved. This settlement was the result of a contested litigation and arm's-length bargaining between experienced counsel, and occurred with the assistance of the court.

In this context, we note that the litigation risks faced by the parties are substantial. Plaintiffs ESPINOBARROS APOLINAR and FELIX VARGAS and opt-in Plaintiffs claimed that prior to December 1, 2015, were subject to a fifteen percent (15%) deduction from their *Seamless* and *Toasties* delivery gratuities, and one hundred percent (100%) of credit card tips. After December 1, 2015, and allegedly in retaliation for filing the present lawsuit law suit, Defendants changed their tip retention policy such that Toasties customers are charged a fifteen percent (15%) delivery fee. Plaintiffs claimed that on the *Seamless* and *GrubHub* websites, Defendants represented to Toasties customers that the delivery fee will be shared with deliverymen even though in reality no portion of the delivery fee is shared. Furthermore, Plaintiffs claimed uniform meal deduction without proper meal deduction notice in English and in Spanish and/or in French.

If this settlement agreement is not approved, then the parties would go forward to a full trial on the merits. Afterward, the determination of the case could be the subject of a further appeal. The parties anticipate that further litigation would lead to increased litigation costs, use of judicial resources, and extensive delay of resolution. In light of these factors, including the serious risks posed by further litigation, this settlement agreement is a reasonable compromise over the contested issues and the Court's approval is appropriate. The parties believe for all of the reasons stated in this letter, the Cheeks v. Freeport Pancake House, Inc., 796 F. 3d 199, 206 (2d Cir. 2015) factors have been satisfied.

The Settlement Agreement is attached hereto as Exhibit 1.

A. Plaintiffs' Assessment

Plaintiffs' counsel evaluated Plaintiffs' potential damages by discussing with Plaintiffs in great detail the length of the nature of their work schedule and work period, illegal meal deductions (if any) which brought their wage below the federal and/or state minimum wage, tips illegally retained by Defendants (if any).

Plaintiffs' salculations were made based on this review and the potential damages for the Plaintiff are as follows:

Plaintiff DELFINO FELIX VARGAS worked for Defendants from on or about April 22, 2013 to the present day. He worked from Monday through Thursday from 11:00 to 12:00 to 20:00, Friday from 13:00 to 19:00 and Saturday from 08:00 to 17:00 from between forty four (44) to forty eight (48) hours each week. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Twenty Six Thousand Three Hundred Ninety Nine Dollars and Sixty Three Cents ($26,399.63). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Twenty Nine

Thousand Nine Hundred Eighty Eight Dollars and Fifty Five Cents ($29,988.55). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; One Thousand Seven Hundred Fifty Four Dollars and Sixty Seven Cents ($1,754.67) in breach-of-contract out-of-pocket delivery costs, and Four Thousand Eight Hundred Thirty Eight Dollars and Twelve Cents ($4383.13) in Prejudgment interest.

Plaintiff GIL ESPINOBARROS APOLINAR worked for Defendants from on or about June 1, 2010 to March 22, 2016. He worked from Monday through Thursday from 11:00 to 12:00 to 20:00, Friday from 12:00 to 19:00 and Saturday from 09:00-17:00 from between forty four (44) to forty eight (48) hours each week. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Twenty Three Thousand Seven Hundred Eighty Two Dollars and Thirty Three Cents ($23,782.33). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Forty Thousand Two Hundred Twelve Dollars and Eighty Nine Cents ($40,212.89). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; One Thousand Nine Hundred Thirty Seven Dollars and Two Cents ($1,937.02) in breach-of-contract out-of-pocket delivery costs, and Eleven Thousand Six Hundred Thirty Three Dollars and One Cent ($11,633.01) in Prejudgment interest.

Plaintiff FELIX ANTONIO CRUZ worked for Defendants from on or about June 1, 2010 to March 22, 2016. He worked from Monday through Thursday from 11:00 to 12:00 to 20:00, Friday from 12:00 to 19:00 and Saturday from 09:00-17:00 from between forty four (44) to forty eight (48) hours each week. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Twenty Thousand Two Hundred Eighty Seven Dollars and Sixty Cents ($20,287.61). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought

Plaintiff's wage below the minimum wage was Twenty Two Thousand One Hundred Thirteen Dollars and Sixty Seven Cents ($22,113.68). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; One Thousand Six Hundred Eighty Dollars and Ninety One Cents ($1,680.91) in breach-of-contract out-of-pocket delivery costs, and Two Thousand Five Hundred Sixty Nine Dollars and Eighty Cents ($2,569.80) in Prejudgment interest.

Plaintiff JOSE JAVIER DORANTES DAVILA worked for Defendants from on or about September 1, 2011 to the present day. He worked for five (5) days from 06:00-14:00 for forty five (45) hours each week. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Thirty Five Thousand Eight Hundred Seventy Six Dollars and Fifty Cents ($35,876.51). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Forty Six Thousand Seven Hundred Twenty One Dollars and Eighty Seven Cents ($46,721.88). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; One Thousand Eight Hundred Seventy Nine Dollars and Ninety Five Cents ($1,879.95) in breach-of-contract out-of-pocket delivery costs, and Ten Thousand Eight Hundred Seventy Six Dollars and Thirty One Cents ($10,876.31) in Prejudgment interest.

Plaintiff JAIME E PAGUAY worked for Defendants from on or about September 9, 2011 to the present day. He worked for six (6) days from 09:00 to 20:00 from Monday through Friday and 08:00 to 17:00 on Saturday. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Thirty Five Thousand Forty Four Dollars and Sixty Three Cents ($35,044.64). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Forty Six Thousand Nine Hundred Eight

Dollars and Thirty One Cents ($46,908.32). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; One Thousand Eight Hundred Seventy Six Dollars and Three Cents ($1,876.03) in breach-of-contract out-of-pocket delivery costs, and Ten Thousand Nine Hundred Thirteen Dollars and Ninety Two Cents ($10,913.92) in Prejudgment interest.

Plaintiff VALENTIN HUEPALCALCO SALOMA worked for Defendants from on or about September 1, 2011 to the present day. He worked for six (6) days from 06:00 to 17:00 from Monday through Friday and 06:00-16:00 on Sunday. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Thirty Nine Thousand Nine Hundred Twenty One Dollars and Eighty Two Cents ($39,921.83). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Fifty One Thousand Four Hundred Two Dollars and Fifty Two Cents ($51,402.53). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; Nine Hundred Seventy Six Dollars and Three Cents ($976.03) in breach-of-contract out-of-pocket delivery costs, and Eleven Thousand Nine Hundred Sixty Five Dollars and Ninety Two Cents ($11,965.92) in Prejudgment interest.

Plaintiff JORGE GONZAGA SOLARES worked for Defendants from on or about September 1, 2011 to May 5, 2013. He worked for six (6) days from 10:00-20:00 from Sunday through Friday. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Eight Thousand Eight Hundred Ninety Dollars and Thirty Six Cents ($8,890.36). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Eight Thousand Eight Hundred Ninety Dollars and Thirty Six Cents ($8,890.36). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for

NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; Six Hundred Twenty Four Dollars and Fifty Two Cents ($624.52) in breach-of-contract out-of-pocket delivery costs, and One Thousand Nine Hundred Twenty Six Dollars and Sixty Nine Cents ($1,926.69) in Prejudgment interest.

Plaintiff EMILIANO HERNANDEZ worked for Defendants from on or about October 28, 2012 to April 30, 2014. He worked for six (6) days from 10:00 to 20:30 from Monday through Friday and 07:00-17:00 on Sunday. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Eight Thousand Nine Hundred Ninety Two Dollars and Forty Five Cents ($8,992.46). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Nine Thousand Nine Hundred Forty Seven Dollars and Ninety Two Cents ($9,947.93). Additionally, Plaintiff claimed Five Thousand Dollars ($5,000.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for NYLL Initial Time-of-Hire Notice Violations; Three Hundred Seventeen Dollars and Forty Five Cents ($317.45) in breach-of-contract out-of-pocket delivery costs, and One Thousand Eight Hundred Twenty One Dollars and Thirty Seven Cents ($1,821.37) in Prejudgment interest.

Plaintiff JORGE LOPEZ GALINDO worked for Defendants from on or about March 15, 2016 to May 15, 2016. He worked for six (6) days from 12:00 to 20:00 from Monday through Saturday. His Fair Labor Standards Act shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Two Thousand Seven Hundred Sixty Seven Dollars and Five Cents ($2,767.05). His New York Labor Law shortfall from 01 tip deduction to pay the deli guy, 02 illegal tip pool retention to pay non-tipped employees; 03 100% credit card tip theft; 04 15% *Seamless/ GrubHub* tip retention; 05 his portion of the 15% delivery fee; 06 illegal meal deduction total, 07 minimum wage insofar as the illegal meal deduction brought Plaintiff's wage below the minimum wage was Two Hundred Ten Dollars and Ninety Two Cents ($210.92). Additionally, Plaintiff claimed Two Thousand Six Hundred Fifty Dollars and No Cents ($2,650.00) for NYLL paystub violations and Five Thousand Dollars ($5,000.00) for

NYLL Initial Time-of-Hire Notice Violations; Three Hundred Seventeen Dollars and Forty Five Cents ($317.45) in breach-of-contract out-of-pocket delivery costs, and One Hundred Twenty Five Dollars and Eighteen Cents ($125.18) in Prejudgment interest.

After extensive negotiations before the scheduled trial, and given the inherent risks of litigation and Defendants' financial consideration, Plaintiffs and Defendants agreed to settle for the proposed settlement amount of Two Hundred Thousand Dollars ($200,000.00) inclusive of attorney fees of the Plaintiffs' counsel. The Damages Calculation for Plaintiff are attached as Exhibit 2.

B. Defendants' Assessment

Defendants, for the purposes of settlement negotiation only, accepted as true, Plaintiffs' allegations of period of employment, hours worked and amount of compensation. Defendants recognize there was a short term problematic tip pool and also recognize the concerns with the deduction from gratuities for attendant credit card fees. However, while Defendants deny other allegations generally, due to potential damages and the costs of litigation, Defendants have agreed to this settlement.

III. The Attorneys' Fees Are Fair and Reasonable

The out-of-pocket expenses, which are necessary and incidental to the representation of Plaintiffs, are documented to the amount of One Thousand Seven Hundred Sixty Nine Dollars and Ninety Seven Cents ($1,769.97). The Net Recovery Amount after the Total Settlement Amount has been reduced by out-of-pocket expenses is One Hundred Ninety Eight Thousand Two Hundred Thirty Dollars and Three Cents ($198,230.03).

Of the Net Settlement Amount, One Third (1/3), or Sixty Six Thousand Seventy Six Dollars and Sixty Eight Cents ($66,076.68), is due to Plaintiffs' attorneys, Troy Law, PLLC, in addition to out-of-pocket expenses, for a total of Sixty Seven Thousand Eight Hundred Forty Six Dollars and Sixty Five Cents ($67,846.65). Of the Net Settlement Amount, Two Thirds (2/3), or One Hundred Thirty Two Thousand One Hundred Fifty Three Dollars and Thirty Five Cents ($132,153.35) is due to Plaintiffs. In this calculation, Troy Law, PLLC has shouldered one third (1/3) of all out-of-pocket expenses.

Of the Net Settlement Amount due to Plaintiffs, Twelve and Nine Hundredth Percent (12.09%), or Fifteen Thousand Nine Hundred Seventy Nine Dollars and Two Cent ($15979.02) is due to Plaintiff DELFINO FELIX VARGAS; Fourteen and Fifty Three Hundredth Percent (14.53%), or Nineteen Thousand Two Hundred Two Dollars and Forty Three Cents ($19202.43) is due to Plaintiff GIL ESPINOBARROS

APOLINAR; Six and Eighty Seven Hundredth Percent (6.87%), or Nine Thousand Seventy Four Dollars and Seventy Four Cents ($9074.74) is due to Plaintiff FELIX ANTONIO CRUZ; Seventeen and Eighty Six Hundredth Percent (17.86), or Twenty Three Thousand Five Hundred Ninety Nine Dollars and Fifty Four Cents ($23599.54) JOSE JAVIER DORANTES DAVILA; Seventeen and Eighty One Hundredth Percent (17.81%), or Twenty Three Thousand Five Hundred Thirty Three Dollars and Fifty Four Cents ($23533.54) is due to Plaintiff JAIME E PAGUAY; Nineteen and Forty Five Hundredth Percent (19.45%), or Twenty Five Thousand Seven Hundred Eight Dollars and Eighty Three Cents ($25708.83) is due to Plaintiff VALENTIN HUEPALCALCO SALOMA; Four and Sixty One Hundredth Percent (4.61%), or Six Thousand Eighty Six Dollars and Sixty Cents ($6086.60) is due to Plaintiff JORGE GONZAGA SOLARES; Four and Eighty Two Hundredth Percent (4.82%), or Six Thousand Three Hundred Sixty Six Dollars and Sixty Seven Cents ($6366.67) is due to Plaintiff EMILIANO HERNANDEZ; and One and Ninety Seven Hundredth Percent (1.97%), or Two Thousand Six Hundred One Dollars and Ninety Eight Cents is due to Plaintiff JORGE LOPEZ GALINDO ($2601.98). The allocation percentage is determined as follows: By first finding the sum of compensatory damages (FLSA and NYLL) in the damages computed and one liquidated damage (NYLL) for each Plaintiff; plus Time-of-Hire and Paystub violations and delivery vehicle costs and then finding the total for both Plaintiffs; and finding the weight of each Plaintiff's compensatory and liquidated damages of this total.

The retainer agreements agreed to and signed by Plaintiff provided that Plaintiff's counsel could recover Thirty Five Percent (35%) of net recovery of any settlement in addition to costs and expenses. Plaintiff's Counsel seek only One Third (1/3) of net recovery of any settlement in addition to costs and expenses. In this calculation, Troy Law, PLLC has shouldered one third (1/3) of all out-of-pocket expenses, while the clients have shouldered two thirds (2/3) of all out-of-pocket expenses. A contemporaneous Time & Billing with itemized expense list is attached (See Exhibit 3).

Defendants do not object to the fee allocation.

For the reasons provided above, the parties respectfully seek this Court's approval of the settlement.

Respectfully Submitted,

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